

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

BONITA K. HOLTZAPFEL,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0334

JO ANNE B. BARNHART,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered nunc pro tunc May 13, 2002, and filed in this case on April 7, 2004, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on August 19, 2005, and proposed that this court (1) confirm and accept the factual and legal analysis within his Proposed Findings and Recommendation, (2) deny plaintiff's motion for summary judgment, (3) deny defendant's motion for judgment on the pleadings, (4) reverse the final decision of the Commissioner, (5) remand this case with directions that the Commissioner fully consider evidence pertaining to claimant's mental impairments in accordance with the prescribed special technique and the requirements of the law applicable to medical opinion evidence

and thoroughly explain the reasons for discounting certain evidence, and (6) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). No objections have been filed by either party.

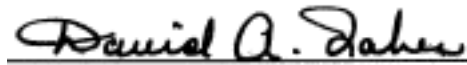
Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court hereby (1) **CONFIRMS** and **ACCEPTS** the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) **DENIES** plaintiff's motion for summary judgment, (3) **DENIES** defendant's motion for judgment on the pleadings, (4) **REVERSES** the final decision of the Commissioner, (5) **REMANDS** this case with directions that the Commissioner fully consider the evidence pertaining to claimant's mental impairments in accordance with the prescribed special technique and the requirements of the law applicable to medical opinion evidence and thoroughly explain the reasons for discounting certain evidence, and (6) **DIRECTS** the

Clerk to remove this matter from the court's docket.

The Clerk is directed to forward a certified copy of this written opinion and order to all counsel of record and to any unrepresented party.

It is **SO ORDERED** this 8th day of September, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge